

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Ollie M. McCaulley was an unsuccessful Republican candidate for the 36<sup>th</sup> Assembly District seat in the March 5, 2002 state primary election. Respondent Friends to Elect Ollie McCaulley (the “Committee”) was Respondent McCaulley’s controlled campaign committee for this election. At all relevant times, Respondent Mark S. Pierce was the treasurer of Respondent Committee. This case arose from an audit of Respondent Committee by the Franchise Tax Board (“FTB”) for the reporting period January 1, 2001 through June 30, 2002. The Committee terminated on December 21, 2002.

The Political Reform Act (the “Act”)<sup>1</sup> requires every committee and its treasurer to maintain specified records regarding the committee’s activities, and prohibits campaign contributions that are not drawn on the bank account of the contributor. In this matter, Respondents failed to maintain required records regarding their campaign activities, and accepted monetary contributions and loans in the form of official bank checks that were not drawn on the account of the contributor or donor.

For the purposes of this stipulation, Respondents’ violations are stated as follows:

**COUNT 1:** Respondents Ollie M. McCaulley, Friends to Elect Ollie McCaulley and Mark S. Pierce failed to properly maintain detailed accounts, records, bills and receipts that were necessary to prepare campaign statements for the reporting period January 1, 2001 through June 30, 2002, in violation of section 84104 of the Government Code.

**COUNT 2:** Between April 11, 2001 and April 12, 2002, Respondents Ollie M. McCaulley, Friends to Elect Ollie McCaulley and Mark S. Pierce accepted monetary contributions and loans from Respondent McCaulley and his wife totaling \$15,950 that were in the form of cashier’s checks, and not drawn from the bank account of the contributor or donor, in violation of section 84300, subdivision (c) of the Government Code.

### **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

### **Duty to Maintain Records**

To ensure accurate campaign reporting, section 84104 imposes a mandatory duty on each candidate, treasurer, and elected officer to maintain the detailed accounts, records, bills, and receipts that are necessary to prepare campaign statements, and to comply with the campaign reporting provisions of the Act.

Under regulation 18401, subdivisions (a)(1) through (a)(5), this duty includes maintaining original source documentation and specific information for all contributions and any loans received by the committee.

### **Contributions and Loans Not Drawn on the Contributor's Bank Account**

Section 84300, subdivision (c) provides that no contribution<sup>2</sup> of one hundred dollars (\$100) or more, other than an in-kind contribution, shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or intermediary, as defined in section 84302.<sup>3</sup> (Emphasis added.)

### **Duties of a Treasurer**

Under section 81004, subdivision (b), section 84100, and regulation 18427, subdivision (c), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

## **SUMMARY OF THE FACTS**

Respondent McCaulley was an unsuccessful Republican candidate for the 36<sup>th</sup> District Assembly seat in the March 5, 2002 state primary election. Respondent Committee was Respondent McCaulley's controlled campaign committee for the election. At all relevant times, Respondent Mark S. Pierce was the treasurer of the Committee.

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<sup>2</sup> According to the definitions of "contribution" and "payment" found in sections 82015 and 82044, respectively, a loan received by a committee qualifies as a contribution.

<sup>3</sup> Section 84302 states no person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the contribution both his own full name and street address, occupation, and the name of his employer, if any, or his principal place of business if he is self-employed, and the full name and street address, occupation, and the name of employer, if any, or principal place of business if self-employed, of the other person.

COUNT 1

**Failure to Maintain Adequate Campaign Records**

The FTB audit found that Respondents failed to properly maintain campaign records for monetary contributions and loans received totaling \$20,050, and non-monetary contributions totaling \$9,000. Between March 2001 and May 2002, Respondents received monetary contributions and loans from Respondent McCaulley or his wife, Aurora Gonzales-McCaulley, as set forth in the following chart:

Date	Contributor	Type of Contribution	Amount	Form of Contribution
03/21/01	Ollie McCaulley	Monetary	\$ 100	No record
04/11/01	Aurora Gonzales-McCaulley	Loan	3,000	Cashier's Check
04/23/01	Ollie McCaulley	Loan	3,000	Cashier's Check
08/25/01	Ollie McCaulley	Loan	5,000	Cashier's Check
01/31/02	Ollie McCaulley	Loan	1,000	No record
02/10/02	Ollie McCaulley	Loan	750	Cashier's Check
02/14/02	Ollie McCaulley	Loan	700	Cashier's Check
02/20/02	Ollie McCaulley	Loan	2,000	Personal Check
02/21/02	Ollie McCaulley	Loan	2,500	Cashier's Check
04/12/02	Ollie McCaulley	Monetary	1,000	Cashier's Check
05/24/02	Ollie McCaulley	Monetary	1,000	No record
TOTAL			\$20,050	

Respondents only maintained copies of the personal check or cashier's checks as noted in the above chart. For contributions and loans totaling \$2,100, Respondents maintained no records. For two of the cashier's checks, Respondents maintained a contributor card, and in two instances, there was a hand-written notation that the contribution was a loan to the committee. Respondents failed to maintain any other information required for reporting loans to a committee as specified in regulation 18401, subdivision (a)(5).

In addition, on the campaign statement for the reporting period October 1, 2001 through December 31, 2001, Respondents reported receiving non-monetary contributions of \$3,000 each from Cesar Garcia, Melissa Garcia, and Josh Garcia on December 31, 2001. The campaign statement reported that all three of these persons were either a printer or graphic designer employed by Ink Spot Printers, and that they had provided "labor" to Respondent Committee. Respondents failed to maintain any record or valuation letter indicating how the amount of the services performed by the Ink Spot Printers' employees was calculated. According to its campaign statements, Respondents made expenditures to Ink Spot Printers for campaign mailings and materials during the election.

Respondents violated section 84104 by failing to maintain adequate records to support the monetary and non-monetary contributions, and loans, received by Respondents during the audit period.

## COUNT 2

### **Receipt of Contributions Not Drawn on the Donor's Bank Account**

The audit also found that Respondents accepted monetary contributions and loans from Respondent McCaulley and his wife totaling \$15,950 that were in the form of cashier's or official bank checks, as noted in the chart above. Section 84300, subdivision (c) states that no contribution of \$100 or more, other than an in-kind contribution, shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee, and drawn on the account of the donor or intermediary. Respondents accepted seven cashier's or official bank checks that were not drawn on the bank account of either Respondent McCaulley or his wife. The checks were actually purchased at a bank or credit union where Respondent McCaulley had a bank account, but cash was used to purchase the checks. Respondent McCaulley stated that the funds used to purchase the official bank checks was from cash that he had at his home. There was no evidence to establish that the funds used to purchase the cashier's checks were from a source other than Respondent McCaulley or his wife.

By accepting monetary contributions and loans in the form of cashier's or official bank checks between April 2001 and April 2002, Respondents violated section 84300, subdivision (c).

### **CONCLUSION**

This matter consists of two counts, which carry a maximum possible administrative penalty of Ten Thousand Dollars (\$10,000).

Respondents were clearly negligent in failing to maintain proper campaign records for monetary contributions and loans, and non-monetary contributions, received by Respondent Committee totaling \$29,050. This was a significant amount, and was over 36% of the total amount of contributions received by Respondent Committee during the audit period. However, most of the recordkeeping violation stemmed from Respondent's failure to maintain proper records for Respondent McCaulley's contributions and loans to his own controlled committee. Administrative penalties for recordkeeping violations have historically ranged from the lower to upper end of the penalty range depending on the particular circumstances of a case. In this matter, the total amount of contributions for which adequate records were not maintained was significant and the violations were repeated. Therefore, imposition of an administrative penalty in the middle range is appropriate.

Respondents were also negligent in accepting cashier's checks in the form of loans and monetary contributions from Respondent McCaulley and his wife, which is strictly prohibited by the Act. Respondents stated that they were not aware that they were prohibited from accepting cashier's or official bank checks that were not drawn on the account of the contributor. There are no prior enforcement actions imposing a penalty for accepting cashier's checks not drawn on the account of the contributor. Based on the facts of this case, a penalty in the middle range is appropriate.

The facts of this case, including the aggravating and mitigating factors addressed above, justify imposition of the agreed upon penalty of Five Thousand Dollars (\$5,000).